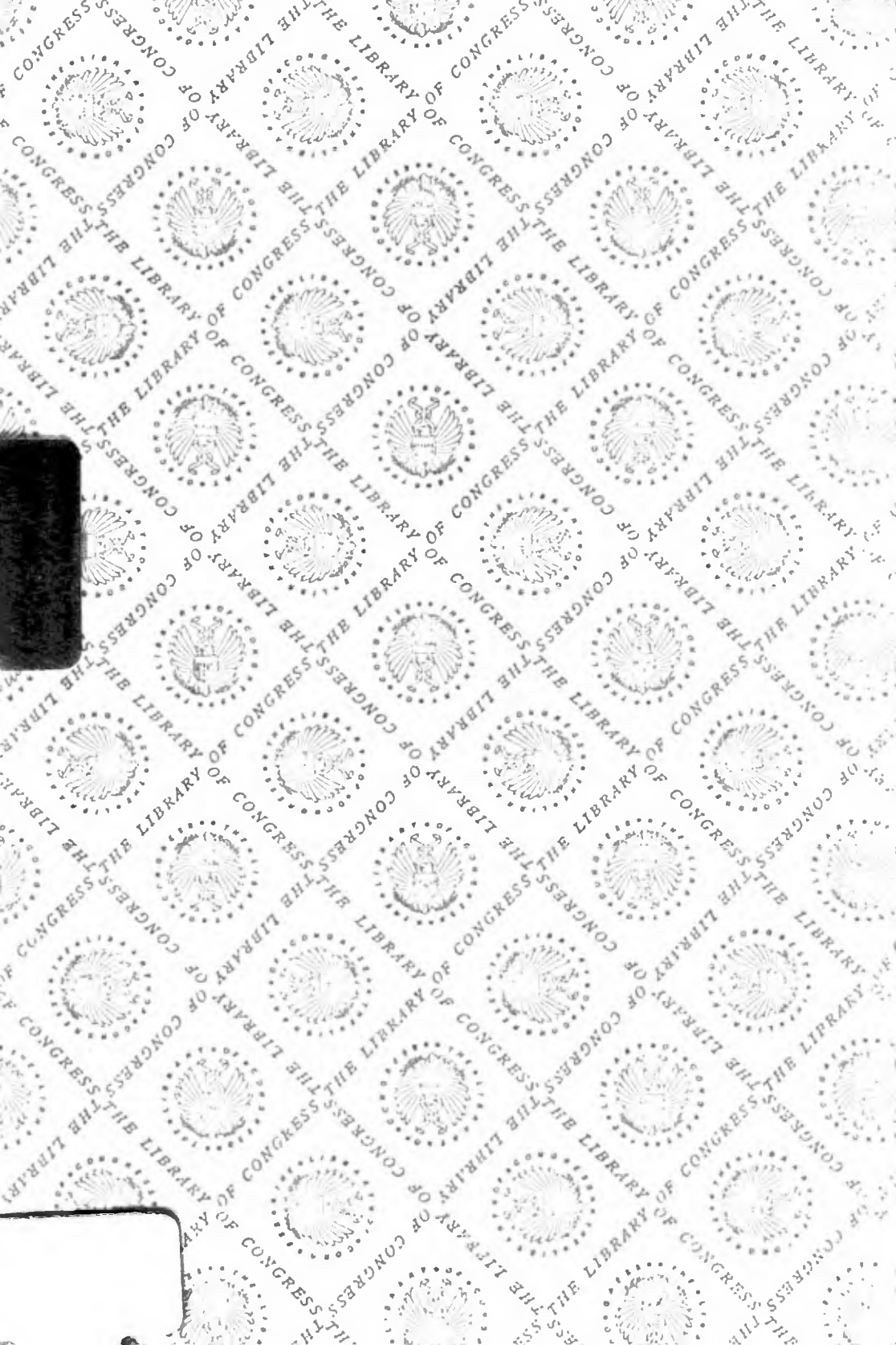
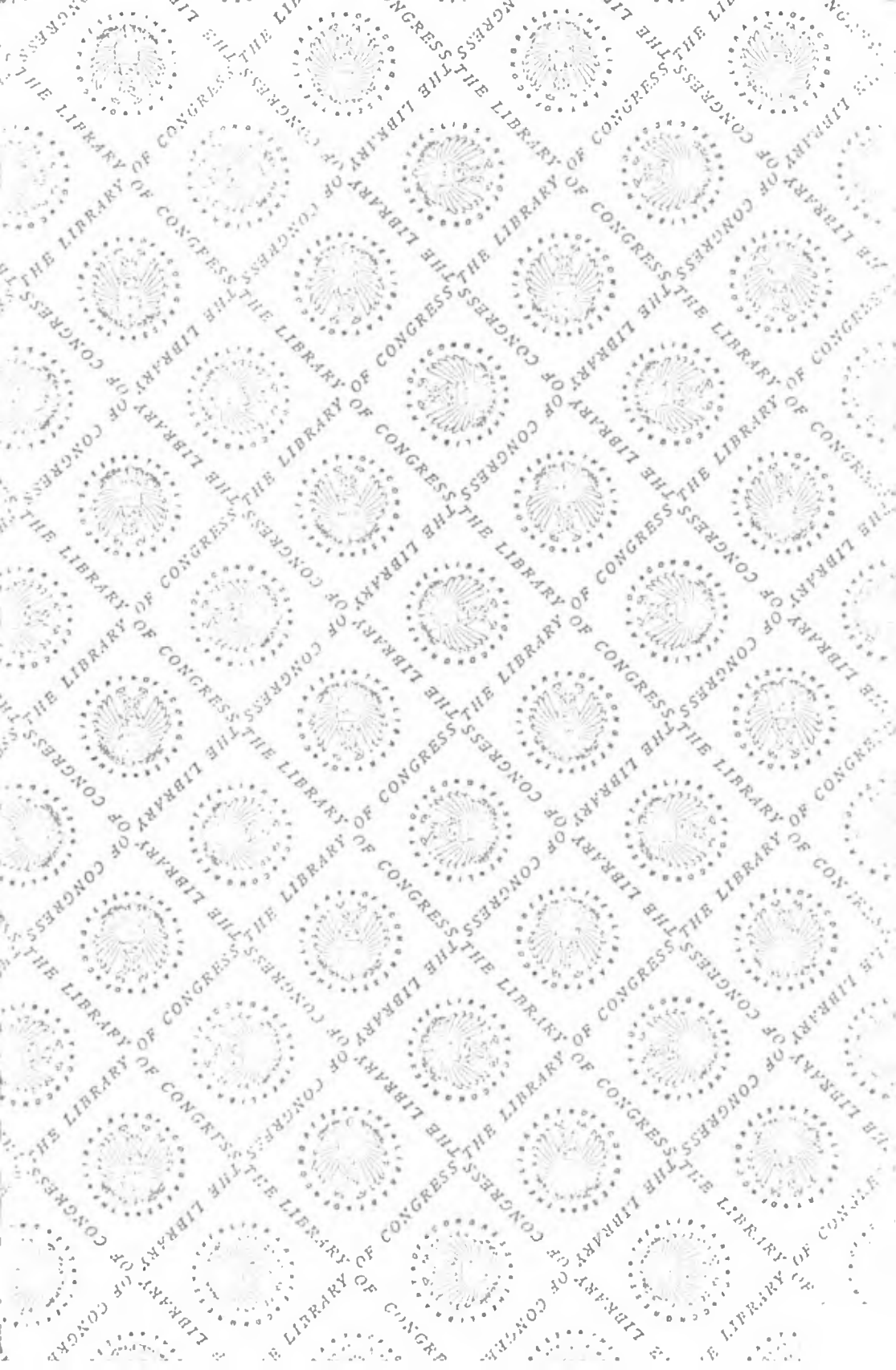


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**AUTHORIZATION FOR THE DEPARTMENT OF JUSTICE
CIVIL DIVISION**

HEARING
BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
FIRST SESSION
ON
AUTHORIZATION FOR THE DEPARTMENT OF JUSTICE
CIVIL DIVISION

MARCH 23, 1979

Serial No. 4



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AUTHORIZATION FOR THE DEPARTMENT OF JUSTICE

FRIDAY, MARCH 23, 1979

**U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENT RELATIONS,
Washington, D.C.**

The subcommittee met at 9:45 a.m. in room 2141 of the Rayburn House Office Building, the Honorable George E. Danielson, chairman the subcommittee, presiding.

Present: Representatives Danielson, McClory, Harris and Barnes.

Staff present: William P. Shattuck, counsel; James H. Lauer, assistant counsel; Janet Potts, assistant counsel; Alan F. Coffey, minority counsel; and Florence McGrady, clerk.

Mr. DANIELSON. The hour of 9:45 having arrived, and we have a quorum present for taking testimony, we will proceed.

This morning our work will be to hear from the Justice Department with respect to authorizations for the next fiscal year. Our witness is the Honorable William G. Schaffer, Deputy Assistant Attorney General of the Civil Division, Department of Justice, who is accompanied by at least one other at the witness table. For the record, would you state the gentleman's name and his title?

Mr. SCHAFFER. R. John Seibert, a trial attorney with the Civil Division.

Mr. DANIELSON. Thank you very much. I have extracted from the large amount of data which the Department furnished earlier this year the portion which relates to the Civil Division. Also we have the statement which arrived here yesterday. Mr. Schaffer, why don't you just go ahead and you may read it, if you wish. I would rather just hear you argue in your very best manner the points that you seek to make, and then see if we have questions.

TESTIMONY OF HON. WILLIAM G. SCHAFFER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY R. JOHN SEIBERT, TRIAL ATTORNEY, CIVIL DIVISION

Mr. SCHAFFER. Very well, Mr. Chairman. I will try to summarize briefly the prepared statement that you have. And then I will be happy to attempt to answer any questions or respond to any comments.

The Civil Division this year has requested \$23,207,000 and 631 positions. This request represents an increase of \$1,682,000 over the fiscal year 1979 authorization. The increase is solely due to uncontrollable increases which are necessary to enable the division to maintain its current level, that is, the fiscal year 1979 level of activities.

As the statement indicates, the Civil Division in September 1978, implemented a large-scale and far-reaching reorganization of its structure. We were previously organized into some 14 specialized sections and units and subdivisions, each with its own administrative structure, each with its own internal management structure. These sections have been described as operating like feudal baronies in the past. The previous structure, while it gave us a great deal of specialization, made overall management of the division extremely difficult and made it extremely difficult for us to move resources around in response to our needs in the litigation that we faced.

I can say, and I say it with pride, that the reorganization is in place; it is functioning; it is succeeding beyond our expectations; and we are now organized into three very large branches along functional lines, each branch representing approximately one-third of the division. The three branches are the Torts Branch, the Commercial Litigation Branch, and the Federal Programs Branch. Each branch is under the direct supervision of one of the three deputy assistant attorneys general, and ultimately under the supervision of the Assistant Attorney General.

The administrative management of each branch has been divided among the former section chiefs, who are now branch directors. There is no overlapping in their responsibility. As a result we have achieved economies which have enabled them to become more involved in the substantive work of their respective branches.

The overall policy guidance to the branches is given collegially by the branch directors, who meet weekly. The staff attorneys are broadening their skills and experience, and we have found ourselves much better able to respond to crises and to urgent needs which arise in litigation, which are unpredictable.

I think, Mr. Chairman, since you do have the statement, I would just stop at that point and attempt to answer the questions that you have.

[The complete statement of Mr. Schaffer follows:]

DEPARTMENT OF JUSTICE

STATEMENT OF WILLIAM G. SCHAFER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, BEFORE THE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENT RELATIONS, HOUSE OF REPRESENTATIVES, CONCERNING CIVIL DIVISION AUTHORIZATION ON MARCH 23, 1979

Mr. Chairman and Members of the Subcommittee: I am pleased to be here this morning to discuss the work of the Civil Division. For fiscal year 1980 the Department has requested for the Civil Division \$23,207,000.00 and 631 positions. Our basic function is to represent the United States in much of the myriad civil litigation in which it is a plaintiff or a defendant. At the outset, I wish to report that the reorganization of the Civil Division, the first in its almost hundred year history, is complete and is a success. The reorganization was a year in the planning and became effective on September 5, 1978. Basically, we have converted 14 specialized sections and units, each with its own management structure, into three large Branches: Torts, Commercial and Federal Programs. Each of the branches is under the general supervision of a Deputy Assistant Attorney General, and is headed by a collegial policy-generating group of Branch Directors. Day-to-day case supervision in each Branch is accomplished by Assistant Branch Directors.

The reorganization had an immediate effect in improving management capability. In the past, each section chief performed a total range of management functions for his small group of attorneys, which meant duplication of effort and

inconsistent treatment of attorneys and staff who were doing essentially the same kind of work. Now branch managers perform non-overlapping management tasks for a large group of attorneys; for example, one director within each branch is in charge of training for the entire branch, another is in charge of case assignment and statistics, etc. Litigation policy is formulated for each branch by the directors acting collegially and, thus, is better thought through, and is consistent for similar types of litigation. Generally, the reorganization has had an immediate pay-off in providing us greater flexibility in the use of resources to staff major pieces of litigation. It has also improved the quality of supervision of attorneys, and given them more varied caseloads, which we expect ultimately will encourage attorneys to remain longer with the Division, and to be more able in representing the United States.

To the extent that money collected or recovered is a measure of the Division's accomplishments, the following facts are presented for fiscal 1978: Almost \$10.8 billion was at issue in the more than 13,200 cases received, and approximately \$4.9 billion was involved in the over 12,000 cases terminated. The cases terminated during this period resulted in an aggregate award to the government of \$228.7 million, nearly three times the total amount awarded to the opponents. At the end of the fiscal year, over 26,400 cases in a total dollar amount of \$62.2 billion were pending.

Of course, money alone is not the measure of the significance of the Division's work. In our Federal Programs Branch, we defend and enforce the whole range of government regulatory activity. This past year, for example, we brought two suits in which temporary injunctions were obtained restraining nationwide strikes involving coal miners under the national emergency provisions of the Taft Hartley Act and postal workers threatening to strike in violation of Titles 5 and 18 of the U.S. Code. Another example is an action under the National Highway Traffic Safety Act in which Ford Motor Company was required to recall vehicles with defective windshield wipers held to constitute a safety hazard to the driving public.

Representative of the Torts litigation is a case arising out of the Sunshine Silver Mine Fire in Idaho in which 91 miners died. The United States was sued for \$60 million. After 68 days of trial, the government was adjudged free of all negligence and was awarded what we believe may be the largest claim for costs in the history of the Federal Tort Claims Act. Also in the Torts area, we have organized a team for the Swine Flue cases and are proceeding to an efficient and just administrative settlement of the majority of the cases.

I should also mention that over the past year the Civil Division has participated with the Associate Attorney General in extensive efforts to improve relations with client agencies and generally to increase the efficiency of the Government's litigation effort. The Assistant Attorney General and the Deputies have engaged in a continuous dialogue with clients in order to identify methods by which we might increase and enrich their part in cases of particular programmatic interest to them.

In sum, the reorganized Civil Division has continued over the past year to perform its role as the government's lawyer in the vast range of cases in which the United States is a litigant. I would be happy to answer any questions or respond to any comments members of the Committee may have.

Mr. DANIELSON. Inasmuch as we have a quorum, but we aren't overstaffed—maybe we have broken up our own organization into too many feudal baronies, I am not sure. But I think we will just go back and forth.

First I recognize Mr. Harris.

Mr. HARRIS. Thank you, Mr. Chairman. I appreciate the information and the manner in which it was presented here ahead of time. I have had a chance to look at it last night and I appreciate the fact it was gotten over here at that time.

One of the functions of the Civil Division, as I think you mention on page 22, is certain claims for money owed the United States pursuant to contracts. There is a considerable effort and some likelihood that the Renegotiation Board may be phased out of existence. Does this change in any way your responsibilities or activities or increase your responsibilities in any way?

Mr. SCHAFFER. I don't believe it will. As I say, one of the advantages of the reorganization was to put all of the attorneys doing commercial and contract type work under one centralized leadership. So that regardless of which forum these issues are litigated in, we have the manpower to handle the cases. If the Renegotiation Board is phased out, if the problems are litigated in other forums, we will be able to handle them. I don't foresee any major increase or decrease in our workload.

Mr. HARRIS. You don't see any more responsibilities as far as initiating actions or oversight as far as excess profit situations?

Mr. SCHAFFER. I have to say that that is not my particular area of expertise, and I would like to reserve the right when I get back to submit additional comments on that.

But as I understand it, it should not.

Mr. HARRIS. Very good. I would appreciate it if you would supply us with that information.

[Material set out on page 19.]

No. 2, we have passed contract disputes legislation last year which changed, or at least placed in statutory form some changes in the method in which those contract disputes are handled.

Do you find any problem in implementing that legislation? Has anything been surfaced that makes your job more difficult or makes it any easier?

Mr. SCHAFFER. I am generally familiar with the legislation and I think it is too early to evaluate the impact. I think the question for us—

Mr. HARRIS. You think it is a good bill, though?

Mr. SCHAFFER. Very definitely. The question which we can't resolve at this point in terms of the impact on our workload will be the number of large cases which go directly into the Court of Claims.

Mr. HARRIS. The direct access provisions?

Mr. SCHAFFER. Yes; the direct access provisions. We suspect many of the cases which go directly will be smaller contractors who, for one reason or another, have missed the 120 day deadline. Those cases will not pose us much of a problem at all.

We also predict that a number of the larger contractors, those with multi-million-dollar complex contracts, will elect to go directly into the Court of Claims, because they feel, or may feel, that they will get a fairer shake there than they would get with the Board of Contract Appeals.

The impact on us will depend on the number of such cases. If the large contractors start going routinely to the Court of Claims directly, then our workload is going to increase and we are going to have to make some manpower adjustments.

Mr. HARRIS. I very much suspect that won't be the case, but I would be very interested—again, Mr. Chairman, I think this is in our oversight function—would be very interested for the subcommittee to be kept aware of the problems or what-have-you with regard to that legislation.

Mr. Chairman, I have a couple of other questions—

Mr. DANIELSON. Go ahead. We are loaded with time this morning. Go right ahead.

Mr. HARRIS. First of all, one general question, and to the extent you can be frank and direct with the subcommittee I would appreciate it. The current relationship, as you found it, with the other agencies; is there proper recognition of the function of the Justice Department

in other agencies? Is that situation improving or getting worse, or is there no problem?

Mr. SCHAFFER. I wish I could say there is no problem. I can't say that.

Mr. HARRIS. It's a good thing you didn't.

Mr. SCHAFFER. I suspect that no one who has ever sat where I am sitting would be able to say that.

I think it is fair to say the situation is improving. We have since this administration has been in office, been very much aware of the problem, and the associate attorney general, Mr. Egan, has devoted a substantial amount of time to it. The assistant attorney general, and all of the deputies have concentrated on client relations.

We are presently engaged in a series of meetings with the general counsel's offices of the various client agencies, and really to our surprise we have been hearing, not uniformly, but we have been hearing from a number of the agencies that they believe that things have improved. And we are certainly striving to improve them.

The Department's position, as you are well aware, is that there is a need for centralized litigating authority.

We have made some adjustments where we are in agreement that the Department can't fully take care of the agency's needs. There is much better communication than there was in the past from the clients to us, where problems have surfaced.

I think arrangements are being worked out; they are being worked out informally, on an ad hoc basis. We experimented, as I believe you know, with written memorandum of understanding early on, and we have concluded that that is really not the way to go, because our experience has been that the memorandum of understanding are giving rise to more litigation than the actual lawsuits.

But I think we are being successful in managing to work the things out informally. And I expect that it will continue to improve.

Mr. HARRIS. I am pleased to hear the progress you have been making in this area.

Do you feel the other agencies are adequately staffed as far as legal personnel are concerned?

Mr. SCHAFFER. With some exceptions; I think we could all use more lawyers.

Mr. HARRIS. On page 19 of the request, and in other places you refer to the Civil Division's role in defending the Government's regulation of the petroleum industry. I was wondering if you could elaborate on that for me and tell us what are the constitutional issues that are involved in the opinion of those who challenge the regulation of prices and allocations, and so forth?

Mr. SCHAFFER. I am afraid I can't give you a direct response on the constitutional questions that are involved. We are gearing up—one of the major priorities in our Federal Programs Branch is the Department of Energy oil litigation. We are gearing up for it, and we anticipate in the future a dramatic increase in the number of those cases.

Mr. HARRIS. In the role of defendant or the role of plaintiff?

Mr. SCHAFFER. In the role of plaintiff.

Mr. HARRIS. I would applaud you for that.

In the western division of Virginia, Ed Williams has temporarily enjoined the Interior Secretary and the Office of Surface Planning from enforcing the Surface Mine Control and Reclamation Act of 1977.

Apparently the issue is whether, as a practical matter, the prevention of strip mining on the slopes above 20 degrees amounts to taking, as I understand the issue. I just wondered what the status of that appeal is, and if the Civil Division is involved, anything about the Civil Division's participation in it. I was wondering whether the U.S. Attorney is handling that, or Interior, or if there are resources being put in.

Mr. SCHAFFER. Let me inquire of Mr. Seibert. No, we don't know the answer to that. It may be in the Lands Division, but in any event we will submit a written answer.

Mr. HARRIS. Finally, it is my understanding that the Federal Programs Branch is currently involved in efforts to stop publication of material describing the process of making a homemade H bomb. Can you tell me what the status of that is, what kind of resources are involved with regard to that case?

Mr. SCHAFFER. We have, I believe, about eight attorneys in Milwaukee working on a brief. There was a temporary restraining order issued. The hearing for preliminary injunction is about to begin. It will begin next Monday. It is a very, very complex and very sensitive issue, because of the first amendment implications on the one hand, and the national security implications on the other hand.

One minor correction, if I may. As I understand it, the fear about the article is not that people will be able to build their own H bombs in their basements, but that some of the less-developed countries with some industrial capability will be greatly aided by some of the material in the article.

Mr. HARRIS. You do not agree with the Washington Post then, that there was nothing in there that isn't found in the encyclopedia?

Mr. SCHAFFER. We do not agree with the Washington Post.

Mr. HARRIS. Thank you very much, Mr. Chairman.

Mr. DANIELSON. Thank you, Mr. Harris. I have a couple of points.

You mentioned earlier in your response to Mr. Harris and also in your material you submitted, that under the new structure of the Civil Division you are able to respond to crises more quickly. How does this work? How do you respond?

Mr. SCHAFFER. Let me give you a concrete example, if I might. Approximately 30 to 45 days ago we had a class action suit filed in Philadelphia seeking monetary damages and seeking a preliminary mandatory injunction requiring the United States to give warnings to all servicemen and all spouses of servicemen who had been exposed to the nuclear testing program in the 1950's that there was a risk of genetic damage as a result of that exposure. This suit is obviously extremely serious, and the matter is in litigation right now.

The question of whether the Government should give notice is obviously extremely sensitive. No. 1, it is not clear to the scientific community that those risks are there, or that they are there in sufficient degree to warrant giving a notice which could cause decisions of people not to propagate, or perhaps to procure abortions and this sort of thing. This is a very difficult issue and one which is very much tied up with the scientific evidence. The case was in preparation by the plaintiffs for a year, and it came to us with a request for a preliminary injunction. So we had a very short time to respond. We were able in a matter of days to put together a team of six attorneys on an offensive team and a defensive team. The offensive team went to work with the help of our client agencies rounding up experts, researching the

law, finding out really what the issues were, and what the best thinking of the scientific community was. The defensive team, again with vast assistance from our clients, started taking depositions and submitting interrogatories to the plaintiffs' experts, and looking into that side of the case.

We are currently, this week, engaged in an evidentiary hearing in Philadelphia on this case. It is a case of very serious implications and nationwide import.

As I say, we had a very very short time to prepare for it. Of course I don't know what the outcome of the hearing will be. But we were prepared for the hearing, and I think the ability to pull six lawyers off of other cases and put them to work full time on something like this is an ability and flexibility which we would not have had under the old section structure.

Mr. DANIELSON. Your last line there, did you say you could not have done that under the old structure, you don't believe? All of these attorneys you put together on both the offensive and the defensive teams I presume came out of the Department's crops of attorneys. You didn't draw them out of offices of the various U.S. attorneys across the land?

Mr. SCHAFER. That is correct. The theory of the reorganization was that while there is a lot of specialization in terms of subject matter, the skills in certain areas, such as, working with experts, getting into the literature, trying to understand their fields of expertise, are skills which are basic, whether you are talking about medical malpractice, nuclear radiation, aviation, whatever you are talking about. And so in the past our Tort Section would have had, for example, 20 attorneys, all of whom would have been working fulltime. We now have a Torts Branch of approximately 80 attorneys, all of whom have that basic expertise, whether they happen to be working on a malpractice case, an aviation case, or whatever. And we thus had a larger pool from which to draw.

Mr. DANIELSON. This particular example you have given comes under your Tort Branch, does it?

Mr. SCHAFER. Yes.

Mr. DANIELSON. And the personnel of the two task forces are from the Tort Branch, then? You aren't transferring back and forth between the Commercial Branch and the Appellate Branch, and what-not, drawing on manpower from other, I guess you call them divisions, the other three divisions? Am I right or wrong?

Mr. SCHAFER. We are calling them branches. In a true emergency, if we had to do it, we do have the ability to draw between the branches. We feel that the branches are large enough, since each branch has nearly 100 attorneys now, all of whom presumably have the same basic skills, that we should not have to do that.

Mr. DANIELSON. Are they substantially equal? You say around 100 attorneys in each branch.

Mr. SCHAFER. The Federal Programs Branch, which includes an appellate staff, is the largest. The Commercial Litigation Branch is the next largest, and the Torts Branch is the smallest. Torts has approximately 80 attorneys.

Another example which perhaps is even a more timely one is the litigation which was mentioned before about the hydrogen bomb. Our

ability to send eight attorneys to Milwaukee is something that we might not have had under the old structure.

Mr. DANIELSON. What is the aggregate number of attorneys you have in the three branches? Is that the 621 figure you have here? I should think that would include some either administrative or supportive personnel.

Mr. SCHAFER. It does. There are approximately 300 attorneys in our fiscal year 1979 authorization.

Mr. DANIELSON. You covered that point, I don't want to wear it out, I am just trying to understand how you function.

Certainly inasmuch as the Attorney General has the responsibility of meeting his obligations, I am certainly going to defer to his judgment as to how best he can do it.

On your tort claims, do you find that they are increasing in number? And about how fast, if so?

Mr. SCHAFER. They are increasing in number, and I am not sure, without looking at the materials, that I can give you the rate. But more significantly, they are increasing in complexity. Whereas 10 years ago our tort litigation was essentially the kind of tort litigation people would find in general practice, medical malpractice, people being run over by mail trucks and the like. We are now, as the Government becomes increasingly involved in regulatory activities, finding ourselves being sued when the regulatory schemes do not work. We are devoting substantial resources, for example, to asbestos litigation. People are suing the manufacturers, and the manufacturers in turn are suing us on various theories of failure to warn, or failure to properly regulate the factories.

The same thing happens in airline litigation. The passengers in an airline accident sue the airline, and the airline turns around and sues the Government.

Mr. DANIELSON. We have, incidentally, a bill pending on airline crash litigation, which, if we have time, we are going to have some hearings on.

But it seems that the United States becomes a party defendant, the ultimate party defendant in most of those cases. Is that not correct?

Mr. SCHAFER. The United States becomes a party in most of the airline cases.

Mr. DANIELSON. We have pending in this subcommittee some proposed amendments to the Tort Claims Act, that would make the United States a party defendant in substantially all misconduct type of cases of Government employees.

If that should become a law, you would, I assume, anticipate a marked increase in your tort claims? Again, am I right or wrong? I am throwing you balls that you can swing at in any way you want to.

Mr. SCHAFER. That is something that we are studying, and of course it is speculative. But I don't think that there is going to be a marked increase in either the number of claims against the Government, or in the ultimate financial exposure of the Government. There will be increased financial exposure, but I suspect that that increase—will be offset by the substantial savings, No. 1, in the money which we are currently spending on private counsel, and No. 2, in our ability to control these cases.

Many of the cases we are talking about the Government is a defendant in as well as the individuals. It is a favorite tactic of plain-

tiff's lawyers in many cases to sue individuals even though they expect the ultimate recovery to come from the United States. And it doesn't just happen in the law enforcement area. We had a situation down in North Carolina where there was an airline crash, and in addition to suing the United States, the airline also sued individually the four air traffic controllers. The amount of the suit is \$34 million, and air traffic controllers do not make that kind of money. The purpose of suing those individuals, which was acknowledged by counsel for the plaintiffs during one of the oral arguments, was on the theory of divide and conquer. They wanted to isolate the United States from its employees, they wanted those employees to have separate counsel, they actually tried to get us disqualified from representing the individuals.

Mr. DANIELSON. Let me interrupt there. I understand your argument, I think we all do. Do you feel if we were to pass these proposed amendments to the Tort Claims Act that by being able to gather together and have a more total control, that you might be able to compensate for increased numbers of cases or even complexity by more efficient management and also in many instances the opportunity to settle prior to trial?

Mr. SCHAFFER. Very definitely. There would be the opportunity to settle, there would be issues that we would not have to litigate, which we are obligated to litigate on behalf of individuals. The answer is a very definite yes.

Mr. DANIELSON. You probably know that there are a number of emotional aspects to that legislation, but we hope to get to them before too long.

Under the appellate system, in your presentation I infer that all of the appellate work now is done by the Department in Washington, through your Civil Division. Is that true?

Mr. SCHAFFER. No. A number of the cases are handled through the U.S. attorney. Any appeal where the Government is going to take the appeal must be authorized by the Solicitor General. So any case which we lose comes to Washington for a decision as to appeal. The ultimate decision is made by the Solicitor General. And if the decision is made to appeal, then a second decision is made as to who is to handle it. In many cases it is the U.S. attorney.

Mr. DANIELSON. I was wondering, because I felt compelled to draw the inference that you were handling it all from here. I should think a person who has tried a lawsuit probably has a leg up on being able to prepare the appeal, in many instances at least.

You mentioned another division, sort of a supervisory one—what do you call it?

Mr. SCHAFFER. We have—

Mr. DANIELSON. The Executive Direction and Control. Does it have the Freedom of Information and Privacy Act work?

Mr. SCHAFFER. It handles the Freedom of Information Act work for the Civil Division only. In other words, if somebody writes in and requests material that is in the Civil Division's files, they handle that. The Freedom of Information and Privacy Act litigation is handled through the Federal Programs Branch.

Mr. DANIELSON. I see. In other words, only the in-house Freedom of Information matters are handled by this administrative agency

otherwise it is done by the agency concerned, or litigation is done in the Federal Programs Branch?

Mr. SCHAFFER. That is correct.

Mr. DANIELSON. Do you have a lot of burden from the Freedom of Information and Privacy Act?

Mr. SCHAFFER. Are you referring to our in-house—

Mr. DANIELSON. Maybe I shouldn't use the word "burden." Do you have much work in connection with Freedom of Information?

Mr. SCHAFFER. Yes. I suppose every agency in Washington is saying that. The process of searching the files is a burdensome one. We have a lot of Freedom of Information Act cases, where material has been withheld and the requester elected to file suit. In those cases, if the agency doing the processing has done its job, the litigation is not that complex.

Mr. DANIELSON. The total man-hours and time consumed, though, in responding to Freedom of Information has become somewhat bigger I think than most people anticipated. I think it wouldn't be a bad idea sometime for the appropriate committee to re-evaluate the Freedom of Information Act. It has a lot of laudable purposes, but like many things with laudable purposes, it seems to have grown extremely big, and is taking a tremendous amount of time.

Collection of judgments, you don't do that here in Washington, do you, except maybe a huge judgment?

Mr. SCHAFFER. Only in the major cases or in the cases where the U.S. attorney's office is so small that they can't staff it. We do some work in the field.

Mr. DANIELSON. That is not a big part of your burden, though?

Mr. SCHAFFER. No. We have several attorneys who specialize in that area.

Mr. DANIELSON. I note that throughout your material—and I am sure there is some reason you use the format you do. But you get to the end and you say "alternatives," or something like that. One of the alternatives is well, you could turn this work over to the client agencies. You are surely not serious about that, are you? You don't want the Department of Justice to turn all of its work over to whoever it may be, Food and Drug Administration, Federal Trade Commission, Department of Agriculture, or whoever it may be? Maybe you do.

Mr. SCHAFFER. Well, there are times when it is tempting. But, no; seriously we don't. The reason we use the format listing the alternatives, I think, that it is required under the zero-based budgeting approach.

Mr. DANIELSON. I knew there would be a reason for it, a reason with which I am not familiar. But it just seemed to me that the Department of Justice happens to be my favorite part of the executive branch, and I would have a difficult time controlling my feelings if you were going to disband it, you know. I remember Churchill saying he wasn't about to preside over the dismemberment of the British Empire. I certainly will not assist on any legislation which is going to dismember the Department of Justice either.

I think it is important that practically all litigation be concentrated in one place for the Government.

So I gather you are not seriously considering that alternative?

Mr. SCHAFFER. We don't consider it a viable alternative.

Mr. DANIELSON. Fine. One other point. I notice that you state that in many instances you are incorporating or including cooperation, people from your client agencies, in your litigation.

To what extent do you do that? Do you have them participate in the litigation, drafting pleadings, giving factual information, or in what way?

Mr. SCHAFFER. It varies. The very minimum is that we require the client agency to prepare a litigation report, which sets out their view of the facts and the law. What we are trying to do, and this is part of our program of improving our relationship with the clients, is to involve them in every phase of the litigation, rather than just having them do the leg work or carry the brief case.

When this works at its best, at the trial stage, agency counsel is designated to undertake the examination of several of the witnesses. We have agency counsel take depositions and this sort of thing. In that way the lawsuit becomes a team effort, everybody has an investment in it, and we to some extent compensate for the limitations on our own resources.

Mr. DANIELSON. How long has this been going on?

Mr. SCHAFFER. The emphasis on this is quite recent, within the last year or 18 months.

Mr. DANIELSON. I am sure you have a basis for your judgment, and I hope it works out right. I am a little afraid though of the camel and tent theory, that you get this started and there is no way you can stop it. That is my opinion.

I have two remaining questions. One of them goes back to torts. And it has some relationship to the comments about nuclear exposure and so forth.

One or more bills have already been introduced in this Congress, and I have had comments from people off and on during the last year, that we need some new kind of a Federal Tort Claims Act, which would specifically provide a cause of action on what they call toxic torts. That may be a euphemism. Anyway, that is the general idea. I don't see, personally, any need for it. Does not the present Federal Tort Claims Act, is it not broad enough so that if there were claims based on the negligence of the Government, in nuclear exposure, for example, the Tort Claims Act would encompass such suits?

Mr. SCHAFFER. We certainly have enough cases where we are being sued on that theory, that I see no need for additional legislation. I think the present act does encompass it. There may be problems in individual cases where there is for some particular reason a jurisdictional defense, and in those circumstances if the result were truly inequitable, legislation may be necessary.

Mr. DANIELSON. This would include such things as the case based upon, say, poisoning from insecticides, pesticides, and the like, wherein I assume somebody, the Department of Agriculture or someone, has given some kind of approval to the interstate commerce in and use of such chemicals and someone allegedly has been injured or harmed thereby. The Tort Claims Act is broad enough for that, assuming the case could be proven, is it not?

Mr. SCHAFFER. So long as there was negligence.

Mr. DANIELSON. Yes; if there were negligence and if it were proven, right. I am only talking about the scope of the law. I don't see any need for new legislation there.

My last point is this: I have looked over as carefully as I can the information you have given us. It looks to me like you are falling behind about at the rate, an increase of about 1,000 cases per year backlog. In the last 3 fiscal years, the backlog has increased according to your statistics approximately 1,000 cases each year.

So that, for example, I think you expect to be behind 4,000 cases at the end of this year; it was 3,000 last time, and 2,000 before that, and so forth.

If that is true, why do we not have a request for more attorneys? I think Justice is a little bit timid, that is a feeling I continually get. I think you need more help than you are asking for.

Mr. SCHAFFER. We did in our initial budget submission to OMB ask for approximately 100 additional attorneys.

Mr. DANIELSON. Then you did see the problem at least?

Mr. SCHAFFER. Yes.

Mr. DANIELSON. I am as tight as anybody in Government, but I think it is foolish not to spend the amount of money you need to spend to meet your responsibilities. It can only aggravate the problem. I am just leaving you with an implication that I don't think you can avoid, and that is that I would be glad to support more if you come up with a reasonably good case, and you have a couple good arguments for some more.

There is one figure I can't quite understand. You had pending 26,400 cases. You expect to have 26,400 cases pending at the end of this year, and you had 13,200 pending at the end of last year. That is an exact doubling. Can you explain that to me?

Mr. SCHAFFER. The figure 13,200 cases was the new cases we received last year. The difference between that and the 26,400 cases, most of our significant cases take more than a year to dispose of.

Mr. DANIELSON. 13,200 were received, and 26,400 were pending. Exactly 2 to 1. I mean such a coincidence strikes me. That is why I am asking about it.

Mr. SCHAFFER. I think it is coincidence. On a flow basis, we received 13,200 new cases, we terminated 12,000 cases. So our net increase in the backlog this past year was only about 1,200 cases. But as the cases that we are involved in grow more and more complex, they stay with us a longer period of time.

I think some of that backlog will be taken care of with the omnibus judges bill.

Mr. DANIELSON. I realize that cases are not fungible; a case is not a case is not a case. You can have everything from somebody having a motor vehicle accident case to aircraft litigation. But we have to deal with some kind of statistics and I guess that is all we have.

Thank you very much for your help. Mr. McClory of Illinois.

Mr. McCLORY. Thank you, Mr. Chairman. I think it is very interesting that of the 12,000 cases terminated, you recovered for the Government \$228 million.

Do you know what our liability in those other terminated cases was?

Mr. SCHAFFER. The recovery was the cases in which we were the plaintiffs. I don't know, but I can certainly find out for you, the amount that we were seeking. I know that the amount that we paid out in judgments where we were the defendant was on the order of \$70 to \$80 million.

Again I am not sure it is a meaningful statistic, because when people sue the Government, they may as well sue for \$1 million, even though they only expect to recover \$50,000 or so. So the amount they sue for is vastly inflated.

Mr. McCLODY. I am just talking about the amount recovered. We had a net excess of recoveries over the amount of our liabilities as far as the outcome of the cases was concerned. Of the pending cases, the 26,000, the amount involved there is \$62 billion. Could you break that down so we know how much the Government is being sued for and whether we are trying to recover?

Mr. SCHAFER. I can get you that figure. I will have to submit it for the record.

[The figures is included in the Justice Department letter on page 19.]

Mr. McCLODY. Do you handle the student loan recoveries in your office?

Mr. SCHAFER. That is in the Civil Division. It is not under my direct supervision.

Mr. McCLODY. Is that a major or prominent activity of your division?

Mr. SCHAFER. Yes. One of our priorities is the recovery of not only the student loans, but recovery from other programs administered by the Department of Health, Education, and Welfare, most prominently the medicare and medicaid fraud cases. Those are initially brought by the agency, and we have been working with the agency, that is, with HEW, to help them get the cases in better shape so if they can't recover the funds administratively, we are ready to go into court.

I think our increased aggressiveness in those cases has had a deterrent effect. People are, I think, paying up more readily or making appropriate arrangements with the agencies.

Mr. McCLODY. Do you have some new methods of increasing recoveries on the student loan program?

The reason I ask that is, you know, we sort of jeopardize the whole program when we find that there are massive defaults, and even deliberate defaults. Because many believe that there won't be any civil recovery attempted.

Mr. SCHAFER. Yes, As I say, there is an increased emphasis on it. And one of the areas of the increased emphasis is we are going after not so much the individual students who may have been defaulting on loans, but the schools and the suppliers. I think a large measure of the money that the Government has been losing in past years in these programs is not from the defaults by individuals, but the organizations, schools, that are submitting false information.

Mr. McCLODY. I understand that. That is a different problem. But I suppose that may raise questions as to the whole program which the Federal Government has with regard to these grants to schools. But the thing that concerns me, is that when there are massive defaults on the part of some students who deliberately refuse to repay, and we don't have a civil recovery program, we place the whole program in jeopardy.

Well, have you had anything to do, or does your division have anything to do with the recoveries against the People's Church as a result of the tremendous expense that the United States incurred in returning bodies from Guana?

Mr. SCHAFFER. That is presently in litigation and the Civil Division is handling that.

Mr. McCLORY. That is under your jurisdiction?

Mr. SCHAFFER. Yes.

Mr. McCLORY. How long have you been with the Department?

Mr. SCHAFFER. Since 1977.

Mr. McCLORY. And your prior experience was in a district attorney's office or private practice or the academic world?

Mr. SCHAFFER. All of the above.

Mr. McCLORY. All of the above?

Mr. SCHAFFER. Yes.

Mr. McCLORY. Now you know that this Congress has been described quite extensively as the "oversight Congress." Most of our oversight occurs as a result of reports which we receive from the General Accounting Office. However, there are very very few of the GAO reports that we receive that we do anything about. We may conduct a few oversight hearings after we receive them. Most members don't even read them.

But do you receive all of the GAO reports?

Mr. SCHAFFER. I don't believe that we receive all of them.

Mr. McCLORY. The GAO reports would indicate very graphically where wrongdoing exists in the executive branch and the bureaus. Where they are failing to comply with the law; where there are improper diversions of Federal funds. I would certainly admonish you to make an effort to get those GAO reports and have somebody in the Department look at them. Because it might open up vast fields of improper diversion of Federal funds, misapplication or misuse of funds, inconsistent with the intent of the Congress.

I had another question, which relates to the Torts Claims Act, which we are considering revising. I would judge that if we did enact such legislation, you would have a vastly increased responsibility. Isn't it true that at the present time you are assuming a burden with regard to certain tort claims against Federal employees, which have been questioned by at least one Senate committee? You were criticized for defraying the expense of outside counsel, to defend Federal employees who are sued for alleged excesses of their authority?

You have assumed that responsibility notwithstanding whether the individual Federal employee acted purely independently or without any authority? We still undertake to hire counsel for him anyway?

Mr. SCHAFFER. Well, in a situation where the employee was acting beyond the scope of his employment, we would not represent that employee, either directly or through private counsel. The threshold inquiry, before the Department provides representation through whatever vehicle, is whether the employee was acting within the scope of his employment. Under our regulations we require a certification by the employee's agency, and then the Civil Division undertakes an independent inquiry. So there are two checks.

I don't envision that if the Tort Claims Act amendments are passed, we will have a dramatic increase in our workload. To the contrary, I really feel that given the amount of time we spend wrestling with the problems of private counsel, and given the added complexity of litigation where the United States and individuals are involved, that our workload will actually diminish, if the United States is the exclusive defendant in these cases.

Mr. McCLORY. There is certainly a perception that the extent of your responsibility and liability of the Federal Government would be greatly expanded.

I would judge that those amendments would greatly increase the role of the Civil Division and the number of attorneys required.

Mr. SCHAFER. If I could point out just one statistic. One of the types of cases which the Government would undertake or take liability for, which it doesn't presently have, is the so-called Bevins cases, allegations of constitutional violations. There have only been seven cases where Federal employees have been held liable in Bevins cases, and all of those cases are presently on appeal.

There are many such claims filed, but there have only been seven where there have been judgments for the plaintiffs.

Mr. McCLORY. With respect to the Jonestown claims, again, is there a particular section or group in the Civil Division that is working on that? Including the effort to recover from the Swiss bank accounts, and the entire subject of that litigation and investigation?

Mr. SCHAFER. There is a team of attorneys within our Commercial Litigation Branch working on it, the assets have been frozen, and they have filed suit.

Mr. McCLORY. If I need specific information as to what the current status is, I could contact your Department?

Mr. SCHAFER. Certainly.

Mr. McCLORY. Thank you very much. Thank you, Mr. Chairman.

Mr. DANIELSON. I want to go back to Mr. Harris, who, I am sure, has thought of some more questions.

But following up on Mr. McClory, the Jonestown fallout suits certainly would enjoy great public popularity. I don't think I have received one letter in opposition to trying to collect for that. I have had quite a lot to the contrary. I think that is true of you, too, isn't it, Mr. McClory?

Mr. McCLORY. Yes; it is. But I assume the subject has even more interest in the State of California, than it does in the State of Illinois.

Mr. DANIELSON. We are a very beneficent State. Mr. Harris.

Mr. HARRIS. I don't have any further questions.

Mr. DANIELSON. I have only a couple more. I don't know if that is evidence that we don't know what we are doing here, or whether you have done such a good job that you have exhausted us.

But in these tort cases, following up Mr. McClory, you mentioned the Bevins case. So that the record will be intelligible to those who are not familiar with the Bevins case, is this the Internal Revenue raiding the wrong house in Illinois? Is that the case?

Mr. SCHAFER. No.

Mr. SEIBERT. The Bevins action refers to a 1971 Supreme Court decision involving some Federal drug inspectors who conducted a raid which was later determined to be unconstitutional. The case which I believe you are referring to, Mr. Chairman, are the so-called Collinsville drug raid cases.

Mr. DANIELSON. They happen to both be drug cases, though, narcotics cases, is that right?

Mr. SEIBERT. I think so. I am not familiar with all of the facts.

Mr. DANIELSON. The same type of cases. A Government agent improperly, or at least allegedly improperly executed his warrant.

Mr. SEIBERT. That is correct.

Mr. DANIELSON. If we were to amend the Tort Claims Act, the bulk of the tort claims cases are already such that the Government is the defendant, are they not? Automobile accidents, drivers of motor vehicles, medical malpractice?

Mr. SCHAFER. For drivers of motor vehicles, there is a statute which makes the Government the exclusive defendant.

Mr. DANIELSON. Then the answer to that would be yes?

Mr. SCHAFER. Yes. Not as to doctors.

Mr. DANIELSON. How about medical malpractice in veterans' hospitals, or Army hospitals, for example?

Mr. SCHAFER. It is still possible, as I understand it, to sue the doctor individually in certain limited situations. Obviously the Government has more money than most of the doctors, and most of the suits are against the Government.

Mr. DANIELSON. The proposed expansion of that doctrine, the proposed Tort Claims Act amendments, do you feel that it would open the Government to many more cases? I think you have answered that, but I would like the record to be pretty clear.

Mr. SCHAFER. No; I do not feel it would open us to many more cases.

Mr. DANIELSON. I believe it was your testimony that there could even be a net saving in time, in that cases could be settled, which today can't be settled?

Mr. SCHAFER. That is correct.

Mr. DANIELSON. How about the money spent on the retention of private counsel to represent the Government's employees? What does that aggregate?

Mr. SEIBERT. The total amount of money that we have paid out in fiscal 1978 was about three-quarters of a million dollars. I think we have paid in excess of \$2 million to date. We anticipate the expenditures would be drastically reduced, perhaps by 95 percent or more.

Mr. DANIELSON. But the \$750,000 you speak of for this fiscal year, that would be for roughly a 6-month span or less?

Mr. SEIBERT. No. The three-quarters of a million dollars was the total amount paid out in fiscal 1978. We anticipate we will pay out slightly more than that in all of fiscal 1979.

Mr. DANIELSON. Always this raises in the minds of some people a question of whether or not the Government even has a right to hire these counsel, does it not?

Mr. SEIBERT. It has raised that concern. The Attorney General feels very strongly that there is no problem, and he does have the authority. And the Comptroller General has issued an opinion supporting that conclusion.

Mr. DANIELSON. I don't care about the Comptroller General's opinion, only the Attorney General's opinion. But everybody has the right of free speech.

You did request 100 more attorneys which fell on deaf ears. I think that is about all I need for my purposes. How about you, Mr. Harris?

Mr. HARRIS. I have nothing else.

Mr. DANIELSON. I have one comment—excuse me. Counsel has a question.

Mr. SHATTUCK. I would not ask for additional information at this time, but in your material submitted to the committee there is a breakdown of the authorization request for the Department. It is a rather complex table. Would it be possible for us to have a simplified analysis of just exactly what those figures mean in terms of the bill we are considering, so when the members participate in the voting, they can have that in front of them? That would be very helpful.

Mr. SCHAFFER. Let me see if I understand. Do you mean our budget submission?

Mr. SHATTUCK. The Civil Division analysis, in the blue book that accompanied it you have an outline of the Civil Division's requirements. A simplified one that the members could use would be helpful.

Mr. SCHAFFER. All right.

Mr. SHATTUCK. You have emphasized in this material the category of the Tort Claims Branch. Any information you might submit to us in connection with that, that would serve to expand that, would be helpful for two reasons. One, in connection with the authorization bill, and also in consideration of the bill concerning the Tort Claims Act amendments that were referred to. It would flesh out our understanding of the operation of the Department in connection with the defense of tort claims and related litigation. Anything you could submit to us in that connection we would welcome.

We have a bill, we have had for a number of years, a bill concerning the regulatory modification of the APA, and the Sunshine Act, with relation to bank claims and bank matters.

Also you referred to litigation involving various regulatory actions of the Government. As you know, this is the subcommittee that has jurisdiction over administrative law. We are interested in that aspect of your work. So anything you can furnish on that would be helpful.

Finally, we are the subcommittee that considered the recent amendments concerning jurisdiction over foreign states; that is, litigation, commercial litigation involving foreign countries. In your analysis you referred to your section that deals with litigations before foreign tribunals. Just as a general proposition, has this increased, remained stable, or do you have any comments concerning it? And also the reverse, when the United States is the defendant in actions in foreign countries, what is the volume there, how often are we being sued and what is the nature of the actions being brought against us in foreign countries?

Mr. SCHAFFER. I don't have that information with me, but I will get it for you.

Mr. SHATTUCK. Thank you very much. Thank you, Mr. Chairman. [The information on foreign litigation is set out at page 20.]

Mr. DANIELSON. Counsel for the minority side has given me a reminder that is very useful. In the 94th Congress you will recall we passed a bill hopefully to provide for the rapid disposition of claims resulting from the bursting of that dam out in Idaho or Nevada.

There were a lot of claims. And we set up machinery which was intended at least to facilitate the paying of those claims rather quickly, and so forth.

How has that worked out and what is the status of it?

Mr. SCHAFFER. I think in that case we have gotten the best of both possible worlds. The individuals who suffered property damage, as I understand it, have all received compensation under the statute that was enacted by Congress. We are engaged in some fairly complex and massive litigation not against those individuals, but against the insurance companies. I don't know specifically, and I can provide that information, I don't know the specific nature of that litigation. But we have managed to take care of the individuals who were injured, while at the same time not creating an excessive drain on the Treasury.

Mr. DANIELSON. Do you feel in your opinion that this was a good step that we took, and that it served the purpose of furthering the ends of justice, to use one of your cliches?

Mr. SCHAFFER. Very definitely, because it would have added to the tragedy of those people who lost their homes, if they had to go through the delays and expense and trauma of litigation in order to get compensation.

Mr. DANIELSON. Those who were primarily injured have now been taken care of?

Mr. SCHAFFER. Yes.

Mr. DANIELSON. And that is only a couple of years, so that is pretty fast for the track?

Mr. SCHAFFER. Yes.

Mr. DANIELSON. And the Government is now in the position of subrogee, and that is pending?

Mr. SCHAFFER. That is pending and being vigorously litigated.

Mr. DANIELSON. In the last Congress we did something with the False Claims Act, title 31, section 231 and following. We just tinkered with it, though. I believe we gave the Government a broader geographical area for serving process. There was talk at that time that the Department might wish to rewrite, restructure this law, which is of the vintage of the Civil War. What is the status of that?

Mr. SCHAFFER. The Department is considering additional amendments to the Torts Claims Act, and I suspect—I am sorry, to the False Claims Act, and I suspect we will be proposing legislation.

Mr. DANIELSON. We just sort of wondered where we were on it.

I have no more questions.

I have a comment. I wonder, do you have within the Department—I think you will have a counterpart in all departments—people whose profession, whose art is the drawing up of these justifications for appropriations and so forth? Is that a special technique?

At 1 o'clock in the morning, I was attempting to read this statement and trying to understand it, and sleep was approaching like a swarm of wasps. It is awful to read a sentence that is four and a half lines long, without any punctuation marks, and contains seven adjectives, and just try to find out what that sentence means.

I know that in one of these sentences there was a germ of a thought in there someplace, but I had one heck of a time finding it. There should be some kind of a geiger counter to locate the meaning.

You mentioned about your in-house training programs to improve not only the quality of work that the people in the Department do, but also the latitude of their responsibilities. I have a suggestion, and it

derives from a statement that is attributed to President Carter, not long ago, in which he wished people would make things more readable.

Why don't you offer a prize to somebody just for fun, if they can rewrite, for instance, this presentation, it is 36 pages long, if they could rewrite it, who could write it in the least number of pages, without losing any essential thought?

I will bet, to start with, you could cut it in half and it might be a lot of fun. You could do it for the Christmas party, give them a doily or something like that as a price.

I hope you appreciate that I am giving you this suggestion in good spirit. But honestly, it is a burden to read these. Just to try to find out what they really mean.

Mr. SCHAFFER. I can only say, Mr. Chairman, that I had the same problem at approximately the same hour this morning.

Mr. DANIELSON. Bless you. That was a long night. Thank you very much. I remember one night I had a root canal problem, and frankly, it wasn't any worse.

Thank you very much. You have been very helpful and your material is good, for once I can distill it and find out what is in there. I appreciate your help. Thank you very much.

[Thereupon, at 11:05 a.m., the hearing was concluded.]

[The following letter was submitted by Mr. Schaffer in response to subcommittee questions.]

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., April 4, 1979.

Hon. GEORGE E. DANIELSON,
Chairman, Subcommittee on Administrative Law and Governmental Relations,
Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During my testimony before the Subcommittee on March 23, 1979, I indicated that I would provide supplemental responses to a number of the subcommittee's inquiries. The requested information is set forth below. For the convenience of your staff, I have referenced the page of the transcript on which the question appears:

I. If the Renegotiation Board is phased out, will this impact on the responsibilities or activities of the Civil Division? [Transcript p. 6]

The Civil Division presently represents the United States in the Court of Claims when a contractor is dissatisfied with an Order of the Renegotiation Board and seeks a trial *de novo* in the Court of Claims.

As of March 1, 1979, there were 84 cases involving such contractor challenges pending in the Court of Claims. The total amount in controversy in these cases equals \$140,983,977. The termination of the Renegotiation Board will effect the Civil Division caseload in the following ways:

(1) The cases already instituted in the Court of Claims will continue to be litigated;

(2) New cases may be filed in those situations in which the Board has issued an Order and the time for seeking review in the Court of Claims has not expired;

(3) Once the time limit for seeking review of the last Order issued by the Board expires, no new cases can be filed in the Court of Claims.

The impact on the overall work of the Division will therefore be minimal.

II. What is the status of the appeal in *Virginia Surface Mining Association v. Andrus, W.D. Va.*, a suit challenging the enforcement of the Surface Mine Control and Reclamation Act of 1977? [Transcript p. 11]

This suit is being handled by the Lands and Natural Resources Division. I have referred your inquiry to Sanford Sagalkin, Deputy Assistant Attorney General of the Lands Division, who will respond to you directly.

III. What amount of money was sought by the government in the cases terminated in the last fiscal year? [Transcript p. 28]

379.1 million dollars was sought by the government in those cases.

IV. How much money is involved in the pending cases where the government is the defendant; how much is sought in the pending cases where the government is the plaintiff? [Transcript p. 29]

The government appears as defendant in 75 percent of the cases handled by the Civil Division. Plaintiffs seek a total of 60.5 billion dollars in the presently pending cases.

The government appears as plaintiff in 25 percent of the Civil Division's cases. At present, these cases seek recovery of approximately 1.6 billion dollars.

V. Has litigation involving the United States before foreign tribunals increased or decreased? What is the volume of such litigation [Transcript p. 40].

The number of cases, both affirmative and defensive, involving the United States has remained generally stable over the last decade.

Our affirmative suits involve virtually every type of civil claim which would be enforced in domestic courts, but against debtors over whom jurisdiction cannot be obtained in the domestic courts.

At the beginning of fiscal year 1978 there were pending 26 affirmative suits in 18 foreign jurisdictions, seeking a recovery of \$8,500,000. (During fiscal year 1977, 30 affirmative cases were closed and a recovery of \$1,900,000 was paid into the Treasury.)

Our defensive litigation involves claims against the United States, its agencies or instrumentalities, or Government officials (both military and civilian for acts performed in their official capacity). At the beginning of fiscal year 1978 there were pending 152 defensive suits in 33 foreign jurisdictions, seeking \$26 million. (During fiscal year 1977, 61 cases seeking total damages of \$1,800,000, were closed at a cost to the Government of \$35,000 in judgments and compromises.)

I hope the foregoing is responsive to your inquiries. Please do not hesitate to contact me if I can provide any additional information or assistance.

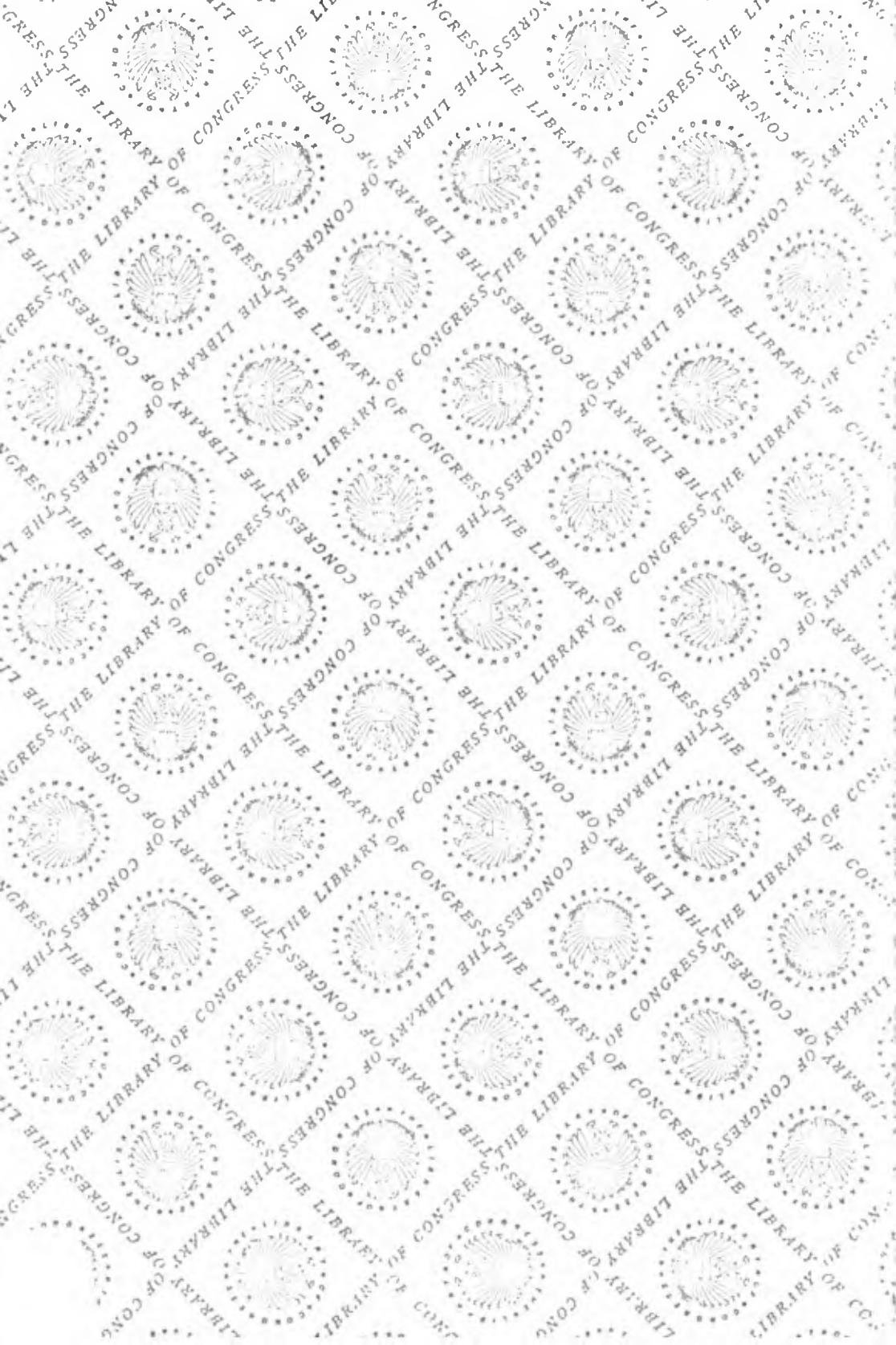
Very truly yours,

WILLIAM G. SCHAFER,
Deputy Assistant Attorney General.

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